IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 3071 of 2006

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUNITA JAIN, W/O. SHRI ASHOK JAIN - Applicant(s)
Versus
SACHIN ARORA & 1 - Respondent(s)

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Appearance :
MR NN PRAJAPATI for Applicant(s) : 1,
MR BALRAM D JAIN for Respondent(s) : 1,
MR MR MENGDE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 11/09/2007

ORAL JUDGMENT

1. Present application has been filed under section 482 of the Criminal Procedure Code by the applicant – original accused to quash and set

aside the impugned complaint being criminal case No. 173 of 2005 filed by the respondent No.1 herein – original complainant for the offence under section 138 of the Negotiable Instrument Act; 1881 (hereinafter referred to as “the NI Act” for short) pending in the Court of learned JMFC, Surat.

2. The impugned criminal complaint has been filed by the respondent No.1 herein against the applicant – original accused in the Court of learned JMFC, Surat for the offence under section 138 of the NI Act alleging inter alia that he has advanced a sum of Rs.1,30,000/- to the accused as she was in need of money as there was a marriage and when the said amount was demanded, the accused had given / issued a cheque dated 20th March, 2005 being cheque No.528552 for an amount of Rs.1,20,000/- drawn on State Bank of India, New Delhi Branch and that the accused has instructed the complainant to deposit the same in the month of July and accordingly, the said cheque was deposited in

the bank i.e. ICICI Bank, Surat on 14th July, 2005 and the said cheque was returned with an endorsement "**funds insufficient**" and thereafter, statutory notices as requires under section 138 of the NI Act was served upon the accused and inspite of the service of the statutory notices, the amount in question has not been paid and therefore, it was alleged that the applicant has committed offence under section 138 of the NI Act. In the said complaint, the learned Magistrate issued the summons upon the applicant for the offence under section 138 of the NI Act and having served with the said summons and warrants, the applicant herein has preferred the present application under section 482 of the Criminal Procedure Code to quash and set aside the aforesaid criminal complaint.

3. Shri Prajapati, learned advocate appearing for the applicant has vehemently submitted that as such, the applicant – original accused has not committed any offence as alleged under section 138 of the NI Act and in fact, the applicant

does not know even the complainant and therefore, there was no question of taking any advance from the complainant. It is also further submitted that as such the cheques in question were stolen and/or misplaced and therefore, the bank was instructed for stop payment and inspite of that, the cheque was returned by the bank wit an endorsement "**funds insufficient"** for which, necessary complaint was already made with the bank. It is also further submitted that as such, for the cheque in question, subsequently, the applicant has filed a criminal complaint with the police station Shahdara, Delhi – 32. Under the circumstances, it is requested to quash and set aside the impugned complaint and the order passed by the learned Magistrate issuing the summons / warrants upon the applicant.

4. Application is opposed by Shri B.D.Jain, learned advocate appearing for the respondent No.1 – original complainant as well as Shri M.R.Mengde, learned APP by submitting that on bare reading of the impugned complaint, prima facie case has

been made out for the offence under section 138 of the NI Act and all the ingredients for making out a case under section 138 of the NI Act are satisfied and therefore, the impugned complaint is not required to be quashed and set aside in exercise of the powers under section 482 of the Criminal Procedure Code. It is also further submitted that whatever submitted on behalf of the applicant are all her defences, which are required to be considered at the time of trial on leading proper evidence. Under the circumstances, it is requested to dismiss the present application.

5. Heard the learned advocates appearing on behalf of the respective parties.

6. On bare reading of the complaint and the averments and allegations in the complaint, it prima facie discloses that all the ingredients for making out a case under section 138 of the NI Act are satisfied i.e. issuance of the cheque; deposited by the complainant; returned

by the bank with an endorsement "**funds insufficient**"; issuance of the statutory notice and non-payment of the amount in question within stipulated time as provided under section 138 of the NI Act. Thus, when all the ingredients for making out a case under section 138 of the NI Act are satisfied, the impugned complaint is not required to be quashed and set aside in exercise of the powers under section 482 of the Criminal Procedure Code. Whatever the submissions made on behalf of the applicant on merits i.e. applicant does not know the original complainant and/or she has not taken any loan from the original complainant and that the cheques were stolen for which a criminal complaint is filed subsequently, are all questions of evidence which are required to be adjudged at the time of trial on leading proper evidence. To quash the complaint at this stage in exercise of the powers under section 482 of the Criminal Procedure Code would be to allow the criminal case / FIR pending at Delhi at the threshold without there being any further trial and to

accept the theory and/or story of the applicant – original accused with regard to cheques being stolen. It is also required to be noted that even the complaint with regard to cheque being stolen is subsequent to the cheque in question. Under the circumstances, no case is made out to quash and set aside the impugned complaint in exercise of the powers under section 482 of the Criminal Procedure Code. Under the circumstances, the same requires dismissal and is accordingly dismissed.

7. Rule is discharged. Ad-interim relief, if any, stands vacated forthwith.

[M.R.Shah, J.]

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